UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE ROYAL BANK OF SCOTLAND GROUP PLC SECURITIES LITIGATION	09 Civ. 300 (DAB)

MEMORANDUM OF THE MISSISSIPPI PUBLIC EMPLOYEES' RETIREMENT SYSTEM IN SUPPORT OF ITS MOTION FOR CLARIFICATION AND RECONSIDERATION

WOLF POPPER LLP
Lester L. Levy
James A. Harrod
845 Third Avenue
New York, New York 10022
Telephone: (212) 759-4600
Facsimile: (212) 486-2093

LABATON SUCHAROW LLP
Thomas A. Dubbs
Louis Gottlieb
Thomas G. Hoffman, Jr.
140 Broadway
New York, New York 10005
Telephone: (212) 907-0700
Facsimile: (212) 818-0477

Attorneys for the Mississippi Public Employees' Retirement System

INTRODUCTION

Ordinary Share Lead Plaintiff the Public Employees' Retirement System of Mississippi ("Miss. PERS") submits this Memorandum in support of its motion, pursuant to Fed. R. Civ. P. 59(e) and Local Rule 6.3, for an order reconsidering and clarifying this Court's January 11, 2011 Memorandum and Order [Dkt. No. 158] (the "Order") to the extent that it has dismissed Miss. PERS completely from this action. Miss. PERS moves to request that the Court reconsider its Order only to the limited extent necessary to clarify that Miss. PERS has standing to pursue, through its counsel, claims on behalf of purchasers of Royal Bank of Scotland Group plc ("RBS") Series U Preferred Shares ("Series U"), which it purchased, and that it should act as a named or representative plaintiff related to the Series U claims.

BACKGROUND

The Court appointed Miss. PERS as a Lead Plaintiff to prosecute claims on behalf of investors who purchased or otherwise acquired RBS ordinary shares. Order Appointing Lead Plaintiffs, Dkt. No. 57, at 8-10. As reflected in Miss. PERS's lead plaintiff Certification[1], in addition to its purchases and acquisition of RBS ordinary shares, Miss. PERS purchased Series U shares, losing $3,685,724 on such purchases. Torell Declaration, Ex. A.

The Court appointed the Freeman Group to serve as Lead Plaintiff for claims brought on behalf of investors who purchased RBS preferred shares (the "Preferred Share Claims"). Lead Plaintiff Order at 10. The Freeman Group purchased RBS Series Q, R.

[1] The Certification of Miss. PERS is attached as Exhibit A to the Declaration of Catherine A. Torell in Support of the State Funds' Motion for Appointment as Co-Lead Plaintiffs, Appointment of Co-Lead Counsel and Consolidation of Related Actions, Dkt. No. 23 (the "Torell Decl.").

S, and T preferred shares. None of the members of the Freeman Group purchased Series U shares. *Id*., at 9.[2]

On July 15, 2009 the three named plaintiffs filed the CAC. ¶¶ 42-44.

In the Court's Order of January 11, 2011, it dismissed Miss. PERS and its counsel entirely from the action based, in part, on the Court's belief that it lacks standing in connection with the Preferred Share Claims:

> Lead Plaintiffs MassPRIM and MissPERS and their counsel, with their counsel, Cohen Milstein Sellers & Toll PLLC, Labaton Sucharow LLP, and Wolf Popper LLP were appointed by this Court to represent a putative class of purchasers of RBS ordinary shares. For the reasons stated above, all claims based upon purchases of RBS ordinary shares are dismissed. **As Lead Plaintiffs MassPRIM and MissPERS are without standing to assert any of the remaining claims, which are based on the purchase of preferred shares, the appointment of Lead Plaintiffs MassPRIM and MissPERS and their counsel is withdrawn and they must be dismissed from this action for lack of standing to sue.**

Order at 27 (emphasis added) (citing *N.J. Carpenters Health Fund v. Residential Capital, LLC*, No. 08 Civ. 8781 (HB), 2010 WL 1257528, at *4 (S.D.N.Y. Mar. 31, 2010)). When the Court dismissed Miss. PERS and its co-lead plaintiff from the action, none of the remaining plaintiffs named in the CAC are purchasers of Series U shares. Because Miss. PERS has standing to assert claims on behalf of investors in RBS Series U preferred shares, it asks the Court to clarify its Order.

ARGUMENT

Fed. R. Civ. P. 59(e) and Local Rule 6.3 permit parties to move the court to reconsider an order determining a motion for, *inter alia*, purposes of clarification. Such reconsideration or clarification is merited if a party can demonstrate that the Court's analysis may not have taken into consideration important factual matters before the Court. *See, e.g.*, *Eisemann v. Greene*, 204 F.3d 393, 395 n.2 (2d Cir. 2000); *Aikman v. County of Westchester*, 691 F. Supp. 2d 496, 497-98 (S.D.N.Y. 2010).

---

[2] *See also* Lead Plaintiffs' Memorandum of Law in Opposition to the Motion by Defendant Royal Bank of Scotland Group plc to Dismiss for Lack of Subject Matter Jurisdiction and Under the Forum Non Conveniens Doctrine [Dkt. No. 124], at p. 21, fn. 15.

As a named plaintiff in the CAC that purchased Series U shares, Miss. PERS is an institutional investor that has standing and wants to continue to prosecute, through its counsel, claims on behalf of itself and other purchasers of Series U shares. This is entirely consistent with Miss. PERS's previously filed certification.[3] As such, Miss. PERS does have standing to assert Preferred Share Claims and has expressed its intent to represent other investors as a representative plaintiff in connection with the Series U claims. Given the record before the Court on the motion to dismiss, it is appropriate for the Order to be clarified to reflect that Miss. PERS has standing on the Preferred Share Claims and should serve as a named or representative plaintiff[4] with respect to the Series U claims.

Clarification is particularly warranted given the Court's acknowledgment that "case law supports dismissal … where Plaintiffs are not purchasers." Order at 22. Clarification is consistent with the Court's reliance on several cases holding that in order to satisfy the standing requirement a plaintiff must be named for each discrete offering pursuant to which claims are asserted. Order at 22-23; *see In re Lehman Bros. Sec. & ERISA Litig.*, 684 F. Supp. 2d 485, 490 (S.D.N.Y. 2010) (dismissing claims related to numerous offerings where the complaint did not name a plaintiff that had purchased in each such offering); *N.J. Carpenters*, 2010 WL 1257528, at *4 ("plaintiffs must have purchased in the particular offering in order to have standing"); *N.J. Carpenters Vacation Fund v. Royal Bank of Scotland Group plc*, 720 F. Supp. 2d 254, 265-66 (S.D.N.Y. 2010) (same). The Series U shares were issued in a discrete offering pursuant to a discrete Prospectus Supplement. *See, e.g.*, CAC ¶ 606. Miss. PERS is a plaintiff that has the necessary standing to prosecute the Series U claims and the Order should be clarified to reflect that fact.

---

[3] *See* Lead Plaintiff Certification of Miss. PERS, stating that it is "willing to serve as a lead plaintiff on behalf of a class." Torell Decl., Ex. A.

[4] "To have standing to sue as a class representative it is essential that a plaintiff must be a part of that class, that is, he must possess the same interest and suffer the same injury shared by all members of the class he represents." *Schlesinger v. Reservists Committee to Stop the War*, 418 U.S. 208, 216 (1974). "[A]dditional named plaintiffs are sometimes necessary to represent potential subclasses at the time of class certification." *In re Deutsche Bank AG Sec. Litig.*, No. 09 Civ. 1714 (DAB), 2009 WL 4277202, at *4 (S.D.N.Y. Nov. 23, 2009) (Batts, J.). In addition to having standing and asserting claims that are typical of the claims of the class, for class certification to be granted the class representatives and their counsel must be adequate: "[b]oth class representatives and class counsel have responsibilities to absent members of the class, and a court must be satisfied that the named plaintiffs will fairly and adequately protect the interests of the class." *In re WorldCom, Inc. Sec. Litig.*, 219 F.R.D. 267, 286 (S.D.N.Y. 2003) (Cote, J.) (internal citations and quotes omitted).

CONCLUSION

For the reasons stated above, Miss. PERS respectfully requests that the Court reconsider its ruling dismissing it from the case to clarify that Miss. PERS should serve as a named plaintiff and proposed class representative in connection with the Series U Preferred Share Claims. Miss. PERS further requests that the Order be clarified to reflect that it should continue to be represented by its undersigned counsel, who it retained at the outset of this case.

Dated: January 25, 2011

Respectfully submitted,

WOLF POPPER LLP

s/ James A. Harrod
Lester L. Levy
James A. Harrod
845 Third Avenue
New York, New York 10022
Telephone: (212) 759-4600
Facsimile: (212) 486-2093

LABATON SUCHAROW LLP

s/ Louis Gottlieb
Thomas A. Dubbs
Louis Gottlieb
Thomas G. Hoffman, Jr.
140 Broadway
New York, New York 10005
Telephone: (212) 907-0700
Facsimile: (212) 818-0477

Attorneys for the Mississippi Public Employees' Retirement System